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**DEC 30 2005**

**OFFICE OF PETITIONS**

In re Application of  
Alcott  
Application No. 09/899,378  
Filed: 7/2/2001  
Attorney Docket No.8285-422

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:DECISION DISMISSING PTA  
:RECONSIDERATION  
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This decision is in response to applicant's NOTICE REGARDING PATENT TERM EXTENSION filed on April 11, 2005 requesting that the Office review the amount of PTA because the determination of 460 days "may extend the term of this patent by too many days." The Office determined that applicant should receive four hundred and sixty (460) days of PTA at the time of the mailing of the notice of allowance.

Applicant's letter regarding PTA is **DISMISSED**.

Applicant's assert that the number of PTA days determined by their analysis may extend the patent by too many days. Applicant did not provide any information as to the nature of the error in the USPTO determination.

Applicant's assertion is not persuasive. A review of the application file reflects that the Office failed to initially act upon the application within fourteen months of the filing date of the application by period of five hundred and forty-six days. See 37 CFR 1.702(a)(1).<sup>1</sup> No additional delays were committed by the USPTO. Applicant had eighty-six (86) days of Office delay for failing to meet the requirement of 37 CFR 1.704(b) by a period of eighty-six (86) days. If applicant believes that the Office has overlooked some factor in this response, then the Office invites applicant to reply with a comment as what the error involves.

The Office suspects that the letter was submitted due to applicant's submission of a terminal disclaimer in the application. The Office does not go through the burdensome task of determining whether or not the terminal disclaimer will prevent the patentees for enforcing the additional days awarded under PTA. However, the Office publishes a notice on the front of the patent that the amount of PTA OR PTE awarded is subject to the limitations in the terminal disclaimer.

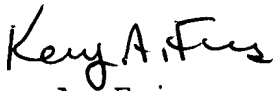
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<sup>1</sup>The Office delay began on September 3, 2002 and ended on March 1, 2004, a five hundred and forty-six (546) day delay.

After the mailing of this decision, the application will be forwarded to the Office of Patent Publications for a prompt issuance of the patent. Any delays occurring under 37 CFR 1.702(a)(4) or (b) will be reflected in the issue notification letter that will be mailed to the applicant approximately three weeks prior to the issue date.

The Office thanks applicants for their good faith and candor in bringing alleged PTO errors to the attention of the Office. Under these circumstances, the Office will not assess a fee for the submission of this letter.

Any questions concerning this decision should be directed to Kery A. Fries, Senior Legal Advisor, at 571-272-7757.

A handwritten signature in black ink that reads "Kery A. Fries". The signature is written in a cursive, slightly slanted style.

Kery A. Fries  
Senior Legal Advisor  
Office of Patent Legal Administration  
Office of Deputy Commissioner  
for Patent Examination Policy